

Fleming, et al. v. COP, et al.

No. CV04-2338 RSM

DECLARATION OF MARCUS B. NASH
IN SUPPORT OF DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

EXHIBIT I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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KENNETH FLEMING, JOHN : CIVIL NO. C04-2338RSM
DOE, R.K., and T.D.,

Plaintiffs, : DEPOSITION OF:
FRED DENISON

v. : TAKEN: January 4, 2006

THE CORPORATION OF THE
PRESIDENT OF THE CHURCH :
OF JESUS CHRIST OF
LATTER-DAY SAINTS, a :
Utah corporation sole,
a/k/a "MORMON CHURCH"; :
LDS SOCIAL SERVICES
a/d/a LDA FAMILY :
SERVICES, a Utah
corporation, :
Defendants. :

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Deposition of FRED DENISON, taken
on behalf of the Defendants, at 60 East South Temple,
Suite 1800, Salt Lake City, Utah, before ROCKIE E.
DUSTIN, Certified Shorthand Reporter and Notary
Public in and for the State of Utah, pursuant to
Notice.

EXHIBIT I

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1 So you don't know whether he was fondled or
2 whether he was raped or whether he had oral sex or
3 anything of that nature at this point in time?
4 A. I don't.
5 Q. Do you have a memory as to whether or not you
6 formed an impression as to whether the abuse which he
7 told you about was of a serious nature?
8 A. I felt like it was of a serious nature, yes.
9 Q. Do you have a memory today of how he appeared
10 to you emotionally at the time that he came to see you
11 initially?
12 A. Yes, somewhat. Mostly visual impressions.
13 Q. All right.
14 Could you tell us what those were?
15 A. He was having difficulty in his schooling and
16 he seemed depressed. I don't remember asking him the
17 questions, but I'm certain I did, but he was -- he
18 seemed depressed, maybe anxious. He was soft spoken.
19 Very troubled with his situation.
20 Q. And do you have any memory today of how he
21 expressed those troubles to you in more specific terms?
22 A. I believe he was worried about his success at
23 work. He was worried that the abuse had had an effect
24 on his sexual orientation. He was worried -- I can
25 only -- this one I can only conjecture, but worried

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1 about his success in general. He just was a very
2 fretful, worrisome young man. A good young man, as far
3 as I could tell. I felt like he was an honest and a
4 good young man, but he was very troubled.
5 Q. Did he express to you -- well, strike that.
6 Do you have a memory as to whether or not he
7 expressed to you that he connected these problems or any
8 problems with the abuse that had been inflicted on him?
9 A. I don't remember the specific verbiage, but
10 it's my firm conviction that that was the reason he
11 came, is because that had been --
12 MR. KOSNOFF: Objection. Not responsive.
13 Move that it be stricken.
14 MR. FREY: Go ahead. You can finish.
15 MR. AUSTIN: You can answer.
16 THE WITNESS: I'm sorry, I don't understand.
17 BY MR. FREY:
18 Q. Mr. Kosnoff is entitled to make objections for
19 the record.
20 A. Okay.
21 Q. But he has made his objection. If you can --
22 if you haven't finished your answer, I would like you to
23 do that.
24 A. Okay. Only that it was my impression that
25 he -- would you repeat the question?

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1 MR. FREY: Okay. Maybe the reporter can read
2 it back for me, please.
3 (Whereupon the record was read by the reporter
4 as follows:
5 QUESTION: Do you have a memory as to whether
6 or not he expressed to you that he connected these
7 problems, or any problems, with the abuse that had been
8 inflicted on him?
9 ANSWER: I don't remember the specific
10 verbiage, but it's my firm conviction that that was the
11 reason he came, is because he had been --)
12 THE WITNESS: Because he had been abused.
13 BY MR. FREY:
14 Q. All right.
15 Did he come to see you for counseling for
16 anything other than the abuse which you have described
17 earlier that he complained of?
18 MR. KOSNOFF: Objection. Form of the
19 question. Calls for speculation.
20 BY MR. FREY:
21 Q. Okay. Go ahead.
22 MR. AUSTIN: You can answer.
23 THE WITNESS: I believe that was the main
24 reason he came.
25 BY MR. FREY:

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1 Q. Was there any other reason he came to see you?
2 MR. KOSNOFF: Objection. Foundation.
3 Objection. Form of the question.
4 BY MR. FREY:
5 Q. Okay. You may answer.
6 A. Well, I think everything had to do with the
7 abuse. And I mentioned that he was concerned about his
8 sexual orientation because of the abuse, but I don't
9 remember the specific verbiage of that, either. Those
10 are the only memories I have of this case.
11 Q. Let me ask you this: At the time that you met
12 with him, do you have an opinion as to -- you know, a
13 professional opinion, with reasonable certainty, that he
14 was capable of understanding the connection between his
15 injury and the abuse at the time that you were
16 counseling him?
17 MR. KOSNOFF: Objection. Form of the
18 question. Foundation. Speculation.
19 BY MR. FREY:
20 Q. You may answer.
21 A. Well, I believe he did.
22 Q. Did he evidence to you in any way that he had
23 any type of a mental deficiency or any type of a mental
24 or emotional problem that he was not able to relate both
25 the abuse and its effect on him to you?

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1 MR. KOSNOFF: Objection.

2 BY MR. FREY:

3 Q. You may go ahead and answer.

4 A. I will have to have you ask the question
5 again, I'm sorry.

6 MR. FREY: Okay. Go ahead, and would the
7 reporter please read the question back?

8 (Whereupon the record was read by the reporter
9 as follows:

10 QUESTION: Did he evidence to you in any way
11 that he had any type of a mental deficiency or any type
12 of a mental or emotional problem that he was not able to
13 relate both the abuse and its effect on him to you?)

14 MR. KOSNOFF: Objection. Form of the
15 question.

16 MR. FREY: You may answer, if you understand.

17 THE WITNESS: I believe I understand the
18 question.

19 A client that is coming in for sexual abuse --
20 I can only answer that generally. This is a client that
21 is coming in for sexual abuse. He had no mental
22 disabilities that I knew of, so I think he understood
23 what we talked about. I'm not sure he understood
24 everything when he came in. I'm sure we discussed this
25 when he was there. As to whether he had a full

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1 Q. All right.

2 Can you tell us about how many sessions you
3 had with him and about how long each of those sessions
4 would have been?

5 A. I don't know for certain. I know it was more
6 than one or two, and it was probably not more than about
7 10. But it was probably closer to the 10 than the two.
8 I know I met several times with him.

9 Q. All right.

10 Did --

11 A. And they lasted -- a normal visit would be 50
12 minutes to an hour.

13 Q. Okay.

14 And were these sessions, do you have a memory,
15 were they prearranged? Did you do them once a week or
16 twice a week? What was the frequency?

17 A. Normal frequency was once a week, and I assume
18 that's what it was, but I don't remember that for
19 certain, either.

20 Q. Do you have any memory as to whether or not
21 you discussed with him anything about what the bishops
22 or other clergy either knew or must have known or did
23 know concerning his abuse?

24 A. I don't have any memory of that.

25 Q. Did he ever discuss with you -- do you have a

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1 understanding of it when he left, I don't know for
2 certain.

3 BY MR. FREY:

4 Q. Okay.

5 Did he at the time -- do you have a memory as
6 to whether or not at the time that you counseled with
7 him that he exhibited any signs of any anxiety?

8 A. I would say yes. I remember -- the only vivid
9 memory I have is that oftentimes he spoke anxiously, it
10 seemed. That may not be a good answer, but his voice
11 cracked a lot and he was on the verge of emotion. I
12 wouldn't say that he cried, but he was very upset about
13 what had happened to him, I know that.

14 Q. Did you form an opinion or were you able to
15 form any type of opinion as to whether or not you felt
16 he was suffering from any type of depression?

17 A. I don't recollect a specific diagnosis, but I
18 would say depression would have been a very appropriate
19 diagnosis at the time, and maybe some anxiety as well.

20 Q. Okay.

21 Did you -- were you able to form an opinion as
22 to whether or not he had -- he exhibited any symptoms
23 related to posttraumatic stress disorder?

24 A. I don't remember symptoms of PTSD, but that
25 doesn't mean he didn't have them.

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1 memory of him ever discussing with you concerning abuse
2 by this individual, this scout leader, of other boys?

3 A. I don't know. I don't remember that. You
4 know, he could have, and my memory leans towards maybe
5 he did, but I don't have any specific memory of that.

6 Q. Did you discuss his sexual orientation at any
7 time with him?

8 A. All I can remember is that he was concerned
9 that the abuse had had some effect on his orientation
10 because he had had some sexual feelings during the
11 abuse. And I was very concerned about that. I
12 contacted a trusted professor at the University of Utah
13 who told me that abuse is never a predictor of sexual
14 orientation, which I relayed to him.

15 And also I tried to help him realize that any
16 feelings of -- from being sexually stimulated is normal,
17 even though it's during abuse. And so even though it's
18 terrorizing to be abused, you can still have sexual
19 feelings. And I tried to help him understand that it
20 wasn't in any way his fault.

21 Q. And am I correct in understanding from what
22 you have told me that he did make that connection
23 between the abuse and these feelings, then?

24 A. I believe he did.

25 Q. Okay.

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1 A. Again, I don't remember the specific dialogue,
2 but I do remember going to my professor and asking her
3 about it.

4 Q. Now, did he ever tell you the name of the
5 individual who abused him?

6 A. If he did, I don't remember his name.

7 Q. From your prior testimony it's my
8 understanding that he did tell you that it was a scout
9 leader or a scoutmaster or something of that nature?

10 A. Yes. I would say scoutmaster, but I'm not
11 absolutely certain.

12 Q. Did you learn from him as to whether or not he
13 had ever been on a mission?

14 A. I did not remember that. I have been told
15 that now, but I did not remember that.

16 Q. Okay.

17 Have you ever had any experience in counseling
18 and working with young men who go on a mission?

19 A. I have.

20 Q. Would you tell me what that experience has
21 been?

22 A. I have worked with young men who have been on
23 missions and have had serious psychiatric problems and
24 had to be hospitalized. I worked with them at the
25 hospital, Utah Valley Regional Medical Center. There

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1 was a number of types of problems, usually serious
2 mental problems like serious depression, psychosis,
3 obsessive compulsive disorder, bipolar disorder and
4 such.

5 Q. In your opinion, is it a rigorous type of
6 endeavor for a young man to go on a mission?

7 A. Certainly.

8 Q. And you didn't -- did you know at the time
9 that Mr. Fleming had completed his mission when you were
10 counseling with him?

11 A. I must have, but I have since forgotten.

12 Q. Did he exhibit, in your opinion, any type of
13 psychosis or any type of OCD, anything you just
14 described at the time that you counseled him on the
15 abuse?

16 A. I don't remember any psychosis. I don't
17 remember any OCD. There could have been some OCD, but I
18 doubt very much if there was any psychosis. But I do
19 think there was some pretty significant depression.

20 Q. Okay.

21 I'm going to ask you some specific questions
22 now, if I can, and, if you can remember, I would like
23 you to answer. If you can't, I don't want you to guess,
24 okay?

25 A. Yes.

Page 24

1 Q. In your memory of your counseling and
2 treatment of him, did he ever -- do you have a memory
3 that he ever expressed to you that he felt insecure in
4 any way?

5 A. Well, I don't remember the specifics, but I
6 would guess, yes.

7 MR. KOSNOFF: Objection.

8 BY MR. FREY:

9 Q. When you say you would guess, yes, what do you
10 mean?

11 A. Well, because he was having difficulty in his
12 court recording school. But I don't remember the words.
13 It's been 20 years. I don't remember words.

14 Q. I understand that and that's fair. And I
15 don't want to put words in your mouth, but I would like
16 to -- if you can remember anything specific about it.

17 A. I can't give you specific wordage, only
18 impressions, and they may not be valid.

19 Q. Did he ever talk to you about not trusting
20 people?

21 A. Again, I don't remember the wordage, but I
22 would guess, yes.

23 MR. KOSNOFF: Objection. Move to strike.

24 BY MR. FREY:

25 Q. Did he ever talk to you about the fact that he

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1 had lost out on having a family or that his ability of
2 having a family had been jeopardized in any way?

3 A. I don't remember that. He was a young man
4 then. I don't know that that had passed him at that
5 point.

6 Q. Did he ever talk to you about his sex life
7 being damaged in any way?

8 A. Only what I have already told you.

9 Q. All right.

10 Did he talk to you about having a hard time
11 holding a job?

12 A. I don't remember him having a job. He was in
13 school. He was having a hard time with his school, but
14 he was attending. When I knew him he was attending
15 school.

16 Q. Did he ever talk to you about having a hard
17 time getting along with people?

18 A. That, I don't remember.

19 Q. Do you remember in these sessions whether or
20 not you gave -- he was able -- well, strike that.

21 In the sessions, in the counseling sessions
22 that you had with him, did you discuss with him or do
23 you have a memory of discussing with him how this abuse
24 might impact him in the future?

25 A. Well, although that's my natural course of

7 (Pages 22 to 25)

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1 of guilt and anger and denial and resolution and all of
2 those kinds of things that have to do with grieving
3 loss. And sexual abuse represents that, definitely.

4 Q. My question is more specific and has to do
5 with feelings of guilt surrounding his own possible
6 personal or moral responsibility for what occurred.

7 Do you remember talking with him about that?

8 A. I don't remember the specifics, but that's
9 probably one of the primary things you talk about with
10 abuse patients.

11 Q. And his recollection of the -- he has
12 testified that his recollection of your sessions focused
13 on his feelings of guilt surrounding the abuse.

14 A. Okay. Good.

15 MR. FREY: I'm going to -- go ahead.

16 BY MR. KOSNOFF:

17 Q. Is that consistent with your recollection?

18 MR. FREY: Wait a minute. Before you answer I
19 want to interpose an objection and you may answer. I'm
20 going to object to the form of the question. It doesn't
21 contain all of the evidence, but go ahead.

22 THE WITNESS: Okay. Well, that sounds
23 consistent to me.

24 BY MR. KOSNOFF:

25 Q. Okay.

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1 And is it your experience in working with
2 individuals who are recovering from child sexual abuse
3 for them to continue to experience symptoms well into
4 adulthood?

5 A. That's often the case, yes. There is
6 organizations like AMAC that treat people like that
7 nowadays. I don't know if it was available back then,
8 but Adults Molested As Children. It's addressed by the
9 therapeutic community.

10 Q. And is it your experience that sometimes those
11 symptoms worsen over time?

12 A. If not properly treated, they can.

13 Q. And an additional -- is it also your
14 experience that additional symptoms and additional
15 difficulties can arise later in adult life?

16 A. I don't know that that's the normal course of
17 things, but I don't deny that it could happen. If a
18 patient doesn't go through a period of therapy long
19 enough to get their problems resolved, they can have
20 difficulty throughout their life.

21 Q. Was there any kind of religious counseling
22 that was a component of your therapy of Ken Fleming?

23 A. Well, often there was, being that it was an
24 LDS counseling center, but I don't remember specific
25 religious counseling that I gave him. I know that I was

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1 very concerned about his abuse.

2 Q. Is it customary for you in your treatment to
3 use LDS scriptural references?

4 A. I suppose it has been done. I don't remember
5 doing that a lot. I don't remember doing it with Ken.
6 That doesn't mean I didn't, but I don't remember doing
7 it.

8 Q. Was it your testimony that male on male child
9 molestation cannot be the cause of a person's later
10 sexual orientation?

11 A. Well, my college professor, who I consulted
12 because he was worried about this, told me that it is
13 not a predictor of sexual orientation.

14 Q. Did he indicate what studies or data he based
15 that statement on?

16 A. I don't remember -- I don't remember.

17 Q. Have you done any study or additional research
18 in that area?

19 A. I don't think I have, but I definitely believe
20 that that is -- you know, that abuse doesn't predict
21 your future. There may be other issues that have to do
22 with sexual orientation, but that was one that my
23 professor told me. And I -- so that's -- I guess that's
24 it.

25 MR. KOSNOFF: Okay. Those are all the

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1 questions I have.

2 MR. FREY: Just a couple of follow-up
3 questions, starting right with Mr. Kosnoff's last issue.

4 FURTHER EXAMINATION

5 BY MR. FREY:

6 Q. Do I understand from what you have said,
7 Mr. Denison, that one of the concerns at the time of
8 your discussions with Mr. Fleming was that he felt that
9 his sexual orientation was affected by, or he had been
10 affected in his sexual orientation, by the abuse from
11 this scoutmaster? That was a concern of his?

12 A. I don't know that he said he had been, but he
13 was afraid of it affecting him.

14 Q. Okay.

15 A. And he had told me that he had had an
16 encounter or -- I don't know how many, but he had had a
17 same sex encounter. But I don't remember discussing
18 that in detail with him.

19 Q. Okay.

20 But at least you remember the subject coming
21 up?

22 A. Yes.

23 Q. Okay.

24 And he also, if I understand it, had feelings
25 of guilt he had indicated to you, that that was one of

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1 the topics that you worked through with him in these
2 sessions?

3 A. Well, as I said to Timothy, I believe that
4 that was one of the major topics of discussion for those
5 who had been sexually abused. And being 20 years ago, I
6 don't remember the specifics of it, but I would bet that
7 that was a major part of the discussion, yes.

8 Q. Is it a correct statement, then, for me to
9 understand your testimony that you don't have a detailed
10 memory of each and everything he complained of?

11 A. No, I don't.

12 Q. Do you?

13 A. No, I don't.

14 Q. Is that correct?

15 A. That's correct.

16 Q. But is there any question in your mind that he
17 connected his, at least, guilt, possible future sexual
18 orientation, and other matters, to the abuse that had
19 been inflicted on him by this scout leader?

20 MR. KOSNOFF: Objection. Calls for
21 speculation. Calls for him to speculate as to what Ken
22 Fleming's thought processes were.

23 BY MR. FREY:

24 Q. Okay. You may answer.

25 A. Only as I said before, that he was worried

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1 about it. That's my memory, that he was worried about
2 it.

3 Q. And he understood that -- he was connecting
4 that to the abuse, though; is that correct?

5 A. Yes.

6 MR. FREY: Okay. All right. I don't have any
7 further questions.

8 MR. KOSNOFF: I think we are finished, then.
9 Thank you, Mr. Denison.

10 (Concluded at 11:12 a.m.)
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1 STATE OF UTAH)

) ss.

2 COUNTY OF SALT LAKE)

3 I, ROCKIE E. DUSTIN, Registered
4 Professional Reporter and Notary Public for the State of
5 Utah, certify:

6 That the foregoing deposition of FRED
7 DENISON was taken before me pursuant to Notice at the
8 time and place therein set forth, at which time the
9 witness was put under oath by me;

10 That the testimony of the witness and all
11 objections made at the time of the examination were
12 recorded stenographically by me and were thereafter
13 transcribed under my direction;

14 I FURTHER CERTIFY that I am neither
15 counsel for nor related to any party to said action nor
16 in anywise interested in the outcome thereof

17 IN WITNESS WHEREOF, I have subscribed my
18 name and affixed my seal this 4th day of January, 2006.
19
20

21 ROCKIE E. DUSTIN, CSR, RPR
22 Notary Public in and for the
23 County of Salt Lake, State of Utah

24 My Commission Expires:
25 January 25, 2009

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1 WITNESS SIGNATURE CERTIFICATION

2
3 STATE OF UTAH)

4) ss.

5 COUNTY OF)
6

7 FRED DENISON deposes and says: That
8 He is the witness referred to in the foregoing
9 deposition; that he has read the same and knows the
10 contents thereof; that the same are true of his own
11 knowledge.
12

13 FRED DENISON
14

15 SUBSCRIBED and SWORN to before me this _____
16 day of _____, 20 .

17
18 Notary Public
19 Residing at
20
21

22 My commission expires:
23 _____
24
25